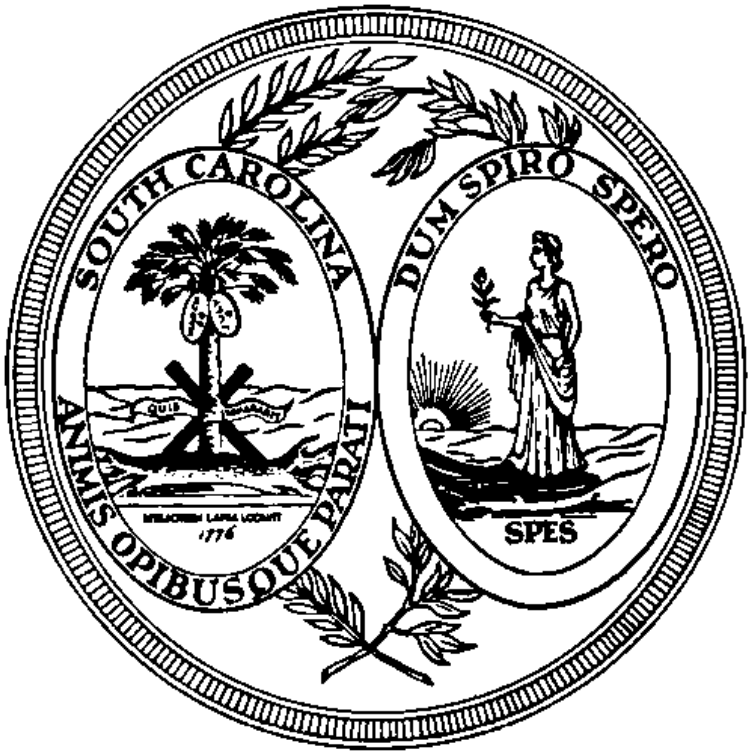
South Carolina Department of Revenue Legislative Update for 2009



The Honorable Mark Sanford, Governor
Ray N. Stevens, Director

This publication is written in general terms for widest possible use and may not contain all the specific requirements or provisions of authority. It is intended as a guide only, and the application of its contents to specific situations will depend on the particular circumstances involved. This publication does not constitute tax, legal, or other advice and may not be relied on as a substitute for obtaining professional advice or for researching up to date original sources of authority. Nothing in this publication supersedes, alters or otherwise changes provisions of the South Carolina code, regulations or Department's advisory opinions. This publication does not represent official Department policy. The Department would appreciate any comments or notifications of any errors. Such comments should be sent to:

Deana West
South Carolina Department of Revenue
P. O. Box 12265
Columbia, SC 29211
westd@sctax.org

TAX LEGISLATIVE UPDATE
FOR 2009

Attached is a brief summary of most of the significant changes in tax and regulatory laws and regulations enacted during the past legislative session. The summary is divided into four categories, by subject matter, as indicated below.

CATEGORY OF LEGISLATION & REGULATIONS **PAGE #**

DISCLAIMER:

This is intended to be a summary of the main points of the legislation; it is not an interpretation by the Department. Please refer to the full text of the legislation for specific details and requirements.

There are several instances where some tax or incentive related legislation briefly summarized is under the jurisdiction of another state agency or political subdivision, and not the Department. In such cases, questions concerning these provisions should be made directly to the agency or political subdivision having primary responsibility for the administration of these acts.

TEXT OF LEGISLATION:

A complete copy of the legislation discussed in this publication can be obtained from the South Carolina Legislative Council's website at http://www.scstatehouse.net/html-pages/legpage.html.

INCOME TAXES AND WITHHOLDING

House Bill 3721, Section 1 (Act No. 16)

Internal Revenue Code Conformity

Code Section 12-6-40(A)(1)(a) has been amended, except as otherwise provided, to update South Carolina's income tax laws to conform to the Internal Revenue Code of 1986, as amended through December 31, 2008, and includes the effective date provisions contained therein.

Effective Date: May 7, 2009

House Bill 3721, Section 2 (Act No. 16)

Internal Revenue Code Sections Not Adopted

Code Section 12-6-50(4) has been amended to specifically not adopt Internal Revenue Code Sections 168(l) (special depreciation allowance for cellulosic biofuel plant property), 168(m) (special depreciation allowance for certain reuse and recycling property), and 168(n) (special depreciation allowance for qualified disaster assistance property).

Code Section 12-6-50(14) has been amended to specifically not adopt Internal Revenue Code Sections 1400 – 1400(U-3) dealing with District of Columbia Enterprise Zone, Renewal Communities, and Short-Term Regional Benefits.

Effective Date: May 7, 2009

House Bill 3721, Section 3 (Act No. 16)

Federal Changes to Corporate Estimated Tax Payments – No SC Penalty

Section 3094 of the Federal Housing Economic Recovery Act of 2008 (Act) changes the amount of certain estimated tax payments for corporations with assets of at least $1 billion. For these corporations, payments due in July, August and September of 2013 are increased by 16.75% of the estimated payment amount required pursuant to Internal Revenue Code (IRC) Section 6655. Payments due in October, November and December of 2013 will be reduced to reflect the amount of the increase in the earlier installment.

Pursuant to Code Sections 12-6-50(16) and 12-6-3910 (South Carolina estimated tax payments provision), South Carolina generally adopts IRC Section 6655 for purposes of calculating South Carolina estimated tax payments for corporate taxpayers. Since, however, Section 3094 of the Act is not part of the Internal Revenue Code, South Carolina did not adopt Section 3094 of the Act.

Under this provision, South Carolina corporate taxpayers that follow the provisions of Section 3094 of the Act will not be subject to South Carolina penalties for failure to pay estimated taxes as provided in Code Section 12-6-3910.

Additionally, accelerated payments scheduled for July, August and September 2012 under Section 401 of the Federal Tax Increase Prevention and Reconciliation Act of 2005 are repealed.

Effective Date: May 7, 2009

House Bill 3560, Part IB, Section 89, Proviso 89.114 (Act No. 23)

Qualifying Solar Energy System - Credit Amount Increased

Code Section 12-6-3587 allows an income tax credit equal to 25% of the costs for the purchase and installation of a solar energy system for heating water, space heating, air cooling, or the generation of electricity in or on a facility located in South Carolina and owned by the taxpayer. In 2008, Code Section 12-6-3587 was amended effective July 1, 2009, to add a small hydropower system as a system also eligible for the credit and to add energy efficient daylighting, heat reclamation, and energy-efficient demand response as eligible uses for the credit.

This temporary proviso increases the amount of the credit allowed to 30% of the costs of purchase and installation of a qualifying solar energy system for a tax year ending in 2009. The credit remains at 25% for the costs of purchase and installation of a qualifying small hydropower system.

Effective Date: This temporary proviso is for a tax year ending in 2009 only.

INCOME TAX REGULATION

Document No. 3205 – SC Regulation 69-75

Income Tax Credits for Legal Residence Fortification Measures Under the Omnibus Coastal Property Insurance Reform Act of 2007 – New Department of Insurance Regulation

The Omnibus Coastal Property Insurance Reform Act of 2007 added the following individual income tax credits in Code Sections 12-6-3660 and 12-6-3665:

1. Credit for Costs to Retrofit Legal Residence. Code Section 12-6-3660 provides an income tax credit for costs to retrofit a taxpayer's legal residence pursuant to Code Section 12-43-220(c) to make it more resistant to loss due to hurricane, rising floodwater, or other catastrophic windstorm event. The costs must be associated with fortification measures promulgated in a regulation by the Department of Insurance and do not include ordinary repair or replacement of existing items. The amount of credit for any taxable year is the lesser of 25% of the cost incurred or $1,000.

2. Credit for Sales or Use Tax Paid on Purchases to Retrofit Legal Residence. Code Section 12-6-3665 provides an income tax credit to individuals for state sales or use taxes paid on purchases of tangible personal property used to retrofit the individual's legal residence under Code Section 12-6-3660. The credit is 6% of the purchase price of tangible personal property for which the individual may claim the income tax credit in Code Section 12-6-3660. The maximum credit allowed is $1,500.

South Carolina Department of Insurance Regulation 69-75 was promulgated to set forth the fortification measures that qualify for the credits in Code Sections 12-6-3660 and 12-6-3665. The standards which must be met by an individual taxpayer for costs to qualify for the credit are the same as those required under the SC Safe Home Program and are contained in the *South Carolina Safe Home Resource Document for Mitigation Techniques* dated July 2008 (Manual). A copy of the Manual is available at www.scsafehome.com (or the SC Safe Home website will direct taxpayers to the location of the Manual on the Department of Insurance website).

Fortification measures must be accomplished in accordance with the standards contained in the Manual which will be updated by the Department of Insurance as necessary. All products used in the fortification measures must have appropriate test reports acceptable to the local building officials for the intended use.

The Manual sets forth six fortification techniques that qualify for the credit: (1) roof deck attachment; (2) secondary water barrier; (3) roof coverings; (4) gable end bracing; (5) reinforcing roof to wall connections; and (6) opening protection for windows, exterior doors, garage doors and skylights.

According to the Manual Introduction, all products may not qualify in all areas of the State. Taxpayers should check with local building officials concerning qualifying products in the particular area. Items such as storm windows, storm doors, and decorative shutters do not qualify. When retrofitting a roof, all three components (the roof deck attachment, secondary water barrier, and roof coverings) must all be completed to qualify for the credit.

To qualify for the credit, a taxpayer must maintain evidence that the fortification measures were implemented and costs incurred. This evidence must be provided to the Department of Revenue upon request. The regulation provides that acceptable forms of evidence include:

1. A written certification or report (with certification) from a licensed professional with expertise in construction techniques, building design or property inspection or appraisal that the fortification measure has been completed in accordance with applicable standards. Licensed professionals include, but are not limited to, an architect, appraiser, building inspector, or contractor. Copies of applicable receipts must be maintained with the certification or report; or

2. An affidavit from the individual taxpayer certifying that the fortification measures have been implemented. Copies of applicable receipts must be maintained with the affidavit.

Questions about the regulation and Manual should be referred to the Consumer Services Division of the Department of Insurance at (803) 737-6180 or (800) 768-3467 (only in South Carolina).

Note: Code Sections 12-6-3660 and 12-6-3665 were effective for taxable years beginning after December 31, 2006; however, taxpayers could not determine whether a fortification measure qualified for the credits until the regulation was promulgated by the Department of Insurance. The Department of Revenue has determined that a taxpayer who has already filed income tax returns and made qualifying retrofit investments after December 31, 2006, may amend previously filed 2007 or 2008 individual income tax returns to claim the appropriate credits.

Effective Date: June 26, 2009

REENACTED TEMPORARY PROVISO

The following temporary proviso was enacted in prior legislative sessions and was reenacted by the General Assembly in 2009. This temporary proviso continues in effect for the State fiscal year July 1, 2009 through June 30, 2010, and will expire June 30, 2010, unless reenacted by the General Assembly in the next legislative session.

House Bill 3560, Part IB, Section 1A, Proviso 1A.31 (Act No. 23)

Teacher Supplies - Reimbursement Amount Not Taxable

This temporary proviso allows for a $275 reimbursement designed to offset expenses for teaching supplies and materials incurred by all certified public school teachers, certified special school classroom teachers, certified media specialists, and certified guidance counselors who are employed by a school district or a charter school as of November 30 of the current fiscal year. This reimbursement is not considered taxable income by South Carolina.

REMINDER

The following provisions were enacted in 2008 or before, but are effective in 2009 or thereafter. They are summarized below for informational purposes.

House Bill 4400, Section 7 (Act No. 280)

SC Illegal Immigration Reform Act – Deduction for Services May be Disallowed

The "South Carolina Illegal Immigration Reform Act" has been enacted. This legislation impacts taxes and licenses administered by the Department primarily in three areas: (1) eliminating the income tax deduction for payments made to certain individuals, (2) requiring withholding on certain individuals, and (3) issuing certain regulatory licenses and permits. The following briefly summarizes the income tax applicability of the Act. See below for discussions of the applicability of the Act to withholding laws and regulatory laws administered by the Department.

Code Section 12-6-1175 has been added to provide that, on or after January 1, 2009, wages or remuneration for labor services of $600 or more per year may not be claimed and allowed as a deductible business expense for state income tax purposes if paid to an individual who is an unauthorized alien. This prohibition applies whether or not an Internal Revenue Service Form 1099 is issued in conjunction with the wages or remuneration.

Code Section 12-6-1175 does not apply to:

1. A business domiciled in South Carolina that is exempt from compliance with federal employment verification procedures under federal law;

2. An individual hired by the taxpayer prior to January 1, 2009;

3. A taxpayer where the individual being paid is not directly compensated or employed by the taxpayer; or,

4. Wages or remuneration paid for labor services to any individual whose employment authorization status was verified in accordance with Code Section 41-8-20.

If, based on a reasonable investigation of the individual, a taxpayer did not know or should not have known that the individual was an unauthorized alien, the taxpayer must not be held liable for failing to comply with this section. A taxpayer shall be deemed to have conducted a reasonable investigation if the individual's employment authorization status was verified in accordance with the provisions of Code Section 41-8-20 and the information provided by the individual to the taxpayer was facially correct.

Note: For questions about the above income tax provision, e-mail TaxTech@sctax.org or call the Department at 803-898-5709. For questions about unauthorized aliens and the documentation needed to substantiate a person's status, please contact your attorney, the federal Department of Immigration and Naturalization, or the South Carolina Department of Labor, Licensing, and Regulation.

Effective Date: January 1, 2009

Senate Bill 1141, Section 2 (Act No. 354)

Energy Efficient Manufactured Home Incentive Program Credit

Code Section 48-52-870 has been added to provide a $750 income tax credit to any person who purchases a manufactured home from a retail dealership licensed by the South Carolina Manufactured Housing Board for use in South Carolina which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency's energy saving efficiency requirements or requirements under each agency's ENERGY STAR program.

The South Carolina Energy Office shall adopt rules to develop credit applications and administer the issuance of the credit and must track and report on the fiscal and energy impact of the program.

Note Expiration: The credit may be claimed beginning July 1, 2009, and no later than July 1 2019.

Effective Date: July 1, 2009

Senate Bill 1141, Section 3 (Act No. 354)

Solar Energy System and Small Hydropower System Tax Credit – Expanded

Code Section 12-6-3587 allows a taxpayer an income tax credit equal to 25% of the costs incurred in the purchase and installation of a solar energy system in or on a facility in South Carolina owned by the taxpayer. The amount of the credit may not exceed $3,500 for each facility or 50% of the taxpayer's tax liability for that taxable year, whichever is less. This section has been expanded to include costs incurred in the purchase and installation of a small hydropower system for heating water, space heating, air cooling, or the generation of electricity in or on a facility in South Carolina owned by the taxpayer and to allow energy efficient daylighting, heat reclamation, and energy-efficient demand response as eligible uses for the credit.

A small hydropower system is defined to mean new generation capacity on a nonimpoundment or on an existing impoundment that (1) meets licensing standards as defined by the Federal Energy Regulatory Commission, (2) is a run-of-the-river facility with a capacity not to exceed 5MW, or (3) consists of a turbine in a pipeline or in an irrigation canal.

Note: See House Bill 3560, Part IB, Section 89, Proviso 89.114 (Act No. 23), a temporary proviso discussed above, increasing the amount of the credit from 25% to 30% for a qualifying solar energy system in a tax year ending in 2009.

Effective Date: July 1, 2009

House Bill 3649, Section 3.A (Act No. 261)

Ethanol/Biodiesel Fuel Production Credits - Amended

Code Section 12-6-3600, providing income tax credits to taxpayers that produce ethanol or biodiesel at a facility in South Carolina, has been amended. The amended credits are briefly discussed below.

1. Credit for Production of Corn-based Ethanol or Soy-based Biodiesel. For taxable years beginning after 2006 and before 2017, Code Section 12-6-3600(A)(1) provides an income tax credit of 20¢ per gallon for each gallon of corn-based ethanol or soy-based biodiesel produced by a corn-based ethanol or soy-based biodiesel facility if the facility is in production at the rate of at least 25% of its name plate design capacity for the production of corn-based ethanol or soy-based biodiesel, before denaturing, on or before December 31, 2011. Under prior law, this requirement had to be met by December 31, 2009. The statute has been clarified to provide that the taxpayer is eligible to claim this credit after the facility has 6 months of operation at an average production rate of at least 25% of its name plate design capacity. In the first taxable year that a taxpayer is eligible to claim the credit, the taxpayer can claim the credit for the first 6 months it met the requirements and for all qualifying production during that taxable year. The credit is allowed for up to 60 months, beginning with the first month the facility is eligible to receive the credit; however, no credit can be claimed after December 31, 2016. Previously, the credit ended as of December 31, 2014.

2. Credit for Production of Ethanol or Biodiesel from Other Materials. For taxable years beginning after 2006 and before 2017, Code Section 12-6-3600(A)(2) provides an income tax credit of 30¢ per gallon for each gallon of noncorn ethanol or nonsoy biodiesel produced by a facility using a feedstock other than corn to produce ethanol or using a feedstock other than soy oil to produce biodiesel if the facility is in production at the rate of at least 25% of its name plate design capacity before denaturing, on or before December 31, 2011. Under prior law, this requirement had to be met by December 31, 2009. The statute has been clarified to provide that the taxpayer is eligible to claim the credit after the facility has 6 months of operation at

an average production rate of at least 25% of its name plate design capacity. In the first taxable year that a taxpayer is eligible to claim the credit, the taxpayer can claim the credit for the first 6 months it met the requirements and for all qualifying production during that taxable year. The credit is allowed for 60 months, beginning with the first month the facility is eligible to receive the credit; however, no credit is allowed after December 31, 2016. Previously, the credit ended as of December 31, 2014.

3. Subsequent Credit for New Production. Beginning January 1, 2017, Code Section 12-6-3600(C) allows a qualifying facility an income tax credit of 7.5¢ per gallon for up to 36 months for each gallon of ethanol or biodiesel produced that qualifies as "new production." "New production" is production which results from a new facility, a facility which did not receive credits before 2017, or an expansion of capacity of at least 2 million gallons if the expansion is placed in service after 2016 and the design engineer certifies to the State Energy Office that the expansion is at least a 2 million gallon capacity expansion. A taxpayer receiving the 20¢ or 30¢ per gallon credit may not receive a credit for expanding production until its eligibility for those credits has expired.

   For an expansion of capacity at an existing facility, annual production must exceed 12 times the monthly average of the three highest months of production during the 24 months immediately preceding certification of the facility to qualify as "new production." However, the credit is not allowed until production exceeds 12 times the 3 month average amount during any 12-consecutive month period commencing on or after January 1, 2017. The taxpayer's amount of credit based on new production must be approved by the State Energy Office.

General Provisions. General provisions relating to amendments of the above credits are briefly summarized below.

1. Code Section 12-6-3600(B) now contains definitions. "Name plate design capacity" means the original designed capacity of an ethanol or biodiesel facility. Capacity may be specified as bushels of grain ground or gallons of ethanol or biodiesel produced a year. An "ethanol facility" is defined as a plant or facility primarily engaged in the production of ethanol or ethyl alcohol derived from renewable and sustainable bioproducts used as a substitute for gasoline fuel. "Biodiesel facility" is defined as a plant or facility primarily engaged in the production of plant-or animal-based fuels used as a substitute for diesel fuel.

2. Any unused credits under Code Section 12-6-3600 may be carried forward for 10 years. All limitations relating to total amount or credit that can be claimed and number of gallons of biodiesel or ethanol that can be subject to the credit continue to apply.

3. To obtain the maximum amount of credit available to a taxpayer under Code Section 12-6-3600, each taxpayer must submit a request for credit to the State Energy Office by January 31 for qualifying gallons for the previous year. By March 1, the State

Energy Office will notify the taxpayer that it qualifies for the credit and the amount of credit it may claim. A taxpayer may claim the credit for the taxable year which contains December 31 of the previous calendar year. For the state's fiscal year 2008-2009, total claims for credits cannot exceed $800,000. To the extent claims exceed this amount, the credits must be allocated proportionately among all taxpayers. Special rules are provided for the allocation of credits from July 1, 2008 and December 31, 2009.

Effective Date: Tax years beginning after 2006 and before 2017 for the credits in Code Section 12-6-3600(A). January 1, 2017 for the credit for increased production in Code Section 12-6-3600(C).

Senate Bill 91, Sections 50 through 55 (Act No. 110)
(See also House Bill 3749, Sections 55 through 60 (Act No. 116))

Single Factor Apportionment - Related Amendments Effective Upon Final Phase In of Single Sales Factor Apportionment Method

Effective for tax years beginning after 2006, Act No. 384 of 2006 amended Code Section 12-6-2250 to enact a single factor apportionment factor for businesses dealing in tangible personal property using the 3 factor (with double weighted sales) apportionment method. The single factor apportionment factor is being phased in and will replace the 3 factor (with double weighted sales) apportionment method for tax years beginning in 2011.

The following amendments, effective for tax years beginning after 2010, update cross references from Code Section 12-6-2250 (the 3 factor apportionment method with double weighted sales and phase in provisions of the single sales factor) to Code Section 12-6-2252 (the single sales factor apportionment method) for the following code sections:

1. Code Section 12-6-1130(6) dealing with computation of the depletion deduction;

2. Code Section 12-6-2240 dealing with apportionment of income; and

3. Code Section 12-6-2290 dealing with gross receipts factor.

The following code sections will be repealed once the sales factor is fully phased in effective for tax years beginning after 2010:

1. Code Section 12-6-2250 (the 3 factor apportionment method with double weighted sales and phase in provisions of the single sales factor);

2. Code Section 12-6-2260 (3 factor apportionment method property factor definition); and

3. Code Section 12-6-2270 (3 factor apportionment method payroll factor definition).

Effective Date: Tax years beginning after 2010.

PROPERTY TAXES

House Bill 3018, Section 2 (Act No. 76)

Legal Residence 4% Assessment Ratio – Eligibility Revised

Code Section 12-43-220(c) provides for a 4% assessment ratio for qualified legal residences. A property owner applying for the 4% assessment ratio must certify, in part, that no other "member of my household" is residing in, or occupying, any other residence which the member has qualified for the 4% assessment ratio. Subitem (iii) defining "a member of my household," in part, has been amended to mean any child under the age of 18 of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant's federal income tax return. Prior to this amendment, "under the age of 18" was not included in the definition.

Effective Date: June 16, 2009

House Bill 3018, Section 1 (Act No. 76)

Exemption for New Single Family Housing for Sale by a Builder – New Exemption

Code Section 12-37-220(B)(51) has been added to provide an exemption for 100% of the value of an improvement to real property consisting of a newly constructed detached single family home offered for sale by a residential builder or developer through the earlier of (a) the property tax year in which the home is sold or otherwise occupied, or (b) the property tax year ending the sixth December 31 after the home is completed and any required certificate of occupancy is issued, provided the required notice is given for each year of eligibility and the county approves.

To obtain the exemption, the owner of the eligible property must notify the county assessor and county auditor by written affidavit that the property is of the type eligible for the exemption and that it is unoccupied. In the first year of eligibility, this notification must be made no later than 30 days after the certificate of occupancy is issued. In subsequent years of eligibility, notification must be made no later than January 31st of the applicable tax year. If the unsold residence is occupied at any time before eligibility for the exemption ends, the owner shall notify the auditor and assessor and the exemption ends after the tax year in which the home is occupied.

Effective Date: June 16, 2009, and applies for single family homes completed and, if required, a certificate of occupancy issued thereon after 2006. No refunds are allowed for property tax years 2007 and 2008 as a result of this exemption.

House Bill 3482 (Act No. 45)

Company Engaged in Air Transport of Specialized Cargo – New Exemption for Aircraft and Other Personal Property

Code Section 12-37-220(B)(33) provides an exemption for all personal property of an air carrier that operates a qualifying air carrier hub terminal facility. This exemption has been newly designated as subitem (a) and subitem (b) has been added to exempt all aircraft and associated personal property owned by a company owning aircraft meeting the requirements of Code Section 55-11-500(a)(3)(i) (*i.e.*, two or more specially equipped planes that are used for the transportation of specialized cargo, irrespective of the number of flights.) An aircraft qualifying for the exemption allowed under subitem (b) may not be used as the basis for an exemption under subitem (a).

Effective Date: Applies for property tax years beginning after 2006.

Senate Bill 278 (Act No. Unassigned)

Property Tax Penalties – Waiver or Reduction by County Resolution

Code Section 12-45-180 imposes penalties for late payment of property taxes on real property. This joint resolution allows the governing body of a county, by resolution adopted by majority vote, to authorize county officials charged with property tax collection to waive or reduce the late payment penalties otherwise imposed with respect to taxes on real property under Code Section 12-45-180 for property tax years 2008 and 2009, provided the full property tax payment is made by April 15 of the applicable tax year.

The resolution must specify the terms and conditions under which the penalties may be waived or reduced and must apply uniformly regardless of the class of real property. Before the resolution is proposed, each local taxing entity on whose behalf the county collects taxes must notify the county of its consent to the resolution. Following adoption of the resolution, the county must apply the waiver and reduction provisions of the resolution to any eligible late payment penalty already paid and refund the appropriate amount to the taxpayer.

Effective Date: June 2, 2009

REENACTED TEMPORARY PROVISO

The following temporary provisos were enacted in prior legislative sessions and were reenacted by the General Assembly in 2009. This temporary proviso continues in effect for the State fiscal year July 1, 2009 through June 30, 2010, and will expire June 30, 2010, unless reenacted by the General Assembly in the next legislative session.

House Bill 3560, Part IB, Section 89, Proviso 89.51 (Act No. 23)

Personal Property Tax Relief Fund Not Funded

This temporary proviso provides that the Personal Property Tax Relief Fund established under Code Section 12-37-2735 to help counties fund the reduction of ad valorem taxes on personal motor vehicles is suspended.

This proviso continues to provide that if a county imposes a personal property tax exemption sales tax in an effort to reduce ad valorem taxes on personal motor vehicles and the 2% sales tax rate on gross proceeds of sales is insufficient to offset the property tax not collected, sufficient amounts must be credited to the Trust Fund for Tax Relief established under Code Section 11-11-150 to provide reimbursement to offset the shortfall in the manner provided in Code Section 4-10-540(A).

Note: As of the date of this publication, no county has reduced the ad valorem taxes on personal motor vehicles by imposing this sales tax.

REMINDER

The following provisions were enacted in 2008 or before, but are effective in 2009 or thereafter. They are summarized below for informational purposes.

Senate Bill 1171, Section 2.J (Act No. 313)

Change in Assessment Ratio for Certain Real Property Owned by or Leased to Manufacturers

Code Section 12-43-220(a), which concerns the classification and assessment ratio applicable to real and personal property owned by or leased to manufacturers and utilities, has been amended to provide that real property owned by or leased to a manufacturer and used exclusively for warehousing and wholesale distribution is not subject to the 10.5% assessment ratio that applies generally to property of manufacturers that is used in the conduct of their business. Previously, this exclusion was available only for property used primarily for warehousing and wholesale distribution of clothing and wearing apparel that was not located on the premises of or contiguous to the manufacturing site of the manufacturer.

The owners of existing warehouses affected by Code Section 12-43-220(a)(4), as amended, who are paying a 10.5% assessment ratio in 2008 shall notify the county in writing by July 1, 2009, for the ratio to be reduced. Warehouses must continue to be assessed at 10.5% of fair market value until this written notification is given.

Effective Date: Applies in each county in the year after the next countywide reassessment is implemented.

House Bill 3233, Sections 2, 3, 4 and 5 (Act No. 91)

Transfer of Title to Watercraft – Unpaid Property Tax Provisions

Code Section 50-23-295, which prohibits transfer of a certificate of title to watercraft or an outboard motor if the Department of Natural Resources has notice of unpaid property taxes on the watercraft or motor, has been amended to provide that the prohibition on title transfer applies only for property taxes due for property tax years beginning after 1999. The bill of sale or title to watercraft or an outboard motor must require certification that such property taxes have been paid and are current as of the date of sale. Under a new penalty provision in subsection (B), a person who falsely signs such a certification is subject to a $500 fee in addition to any applicable criminal penalties, and any title issued in the applicant's name by the Department of Natural Resources is subject to suspension, to be reinstated on proof of payment of all taxes due and payment of the $500 fee.

Uncodified provisions provide (1) that used watercraft and outboard motors obtained from a licensed dealer on or after October 3, 2000 are free and clear of property tax liens for property tax years before 2000; (2) that property taxes paid on watercraft and outboard motors for property tax years before 2000 are not refundable pursuant to any provision of this legislation; and (3) that Act 451 (House Bill 1288) of 2002, which contained similar uncodified provisions applicable only to Lexington County property taxes, has been repealed.

Effective Date: June 14, 2007, except the penalty provision in Code Section 50-23-295(B) takes effect on June 14, 2010.

SALES AND USE TAXES

House Bill 3560, Part IB, Section 89, Proviso 89.135 (Act No. 23)

Sales Tax Holiday for 2009 – Handguns, Rifles, and Shotguns

This temporary proviso authorizes a Second Amendment Sales Tax Holiday for purchases of handguns (as defined in Code Section 16-23-10(1)), rifles and shotguns on November 27 and 28, 2009.

Note: On May 4, 2009, the South Carolina Supreme Court ruled in *The American Petroleum Institute and BP Products North America Inc v. South Carolina Department of Revenue, et al.* (Opinion No. 26645) that Act 338 of 2008 violated the one subject rule of the South Carolina Constitution and was unconstitutional. The Act concerned motor fuel products offered by a terminal (Code Section 12-28-340), a sales tax holiday for handguns, rifles, and shotguns (Code Section 12-36-2120(76)) and a sales tax holiday for energy efficient products (Code Section 12-36-2120(77)). As a result, the sales tax holiday for handguns, rifles, and shotguns, and the sales tax holiday for energy efficient products in Code Sections 12-36-2120(76) and (77), respectively, were eliminated.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2009 through June 30, 2010. The sales tax holiday is effective only for November 27 and 28, 2009.

SALES AND USE TAX REGULATION

Document No. 4004 - SC Regulation 117-314.11

Federal Government Construction Contracts – New Regulation

Sales to, or purchases by, a construction contractor of tangible personal property for use in a federal government construction project in South Carolina for which the contractor has a written contract with the federal government are not subject to the sales and use tax under Code Section 12-36-2120(29). This exemption applies only if the contract necessitating the purchase provides that title and possession of the property is to transfer from the contractor to the federal government at the time of purchase or after the time of purchase and such property is actually transferred to the federal government in accordance with the contract or the property becomes part of real or personal property owned by the federal government or that will be transferred to the federal government.

SC Regulation 117-314.11 addresses the application of this exemption to sales to, or purchases by, a construction subcontractor of tangible personal property for use in a federal government construction project in South Carolina for which the subcontractor has a written contract with a general contractor who in turn has a written contract for the project with the federal government.

Effective Date: June 26, 2009

REENACTED TEMPORARY PROVISOS

The following temporary provisos were enacted in prior legislative sessions and were reenacted by the General Assembly in 2009. These temporary provisos continue in effect for the State fiscal year July 1, 2009 through June 30, 2010, and will expire June 30, 2010, unless reenacted by the General Assembly in the next legislative session.

House Bill 3560, Part IB, Section 89, Proviso 89.86 (Act No. 23)

Viscosupplementation Therapies - Sales and Use Tax Suspended

For this State fiscal year, the sales and use taxes on viscosupplementation therapies is suspended. No refund or forgiveness of tax may be claimed as a result of this provision.

House Bill 3560, Part IB, Section 89, Proviso 89.79 (Act No. 23)

Respiratory Syncytial Virus Medicines Exemption - Effective Date

Act 69, Section 3.PP, of 2003 amended Code Section 12-36-2120(28)(a) to add a sales and use tax exemption for prescription medicines used to prevent respiratory syncytial virus; it was effective for sales on or after June 18, 2003. This temporary proviso changes the effective date of this exemption to January 1, 1999 and provides that no refund of sales and use taxes may be claimed as a result of this change in the effective date.

House Bill 3560, Part IB, Section 89, Proviso 89.49 (Act No. 23)

Private Schools - Use Tax Exemption

This temporary proviso exempts purchases of tangible personal property for use in private primary and secondary schools, including kindergarten and early childhood education programs, from the use tax if the school is exempt from income taxes under Internal Revenue Code Section 501(c)(3). This exemption does not apply to purchases subject to sales tax. See SC Regulation 117-334 for information as to which tax, the sales tax or the use tax, applies when goods are shipped into South Carolina. This use tax exemption is also applicable to purchases occurring after 1995; however, no refund is due any taxpayer on purchases exempted by this provision.

REMINDER

The following provision was enacted in 2008, but is effective in 2009. It is summarized below for informational purposes.

Senate Bill 1141, Section 1 (Act No. 354)

Manufactured Homes – Expanded Exemption for Energy Star Homes

Code Section 12-36-2110(B), concerning the calculation of the maximum tax for manufactured homes, has been amended to completely exempt certain Energy Star homes from the sales and use tax for sales occurring from July 1, 2009 through July 1, 2019.

The sale of a manufactured home is subject to a maximum tax of $300 if the home meets or exceeds certain energy efficient requirements specifically outlined in the law. If the home does not meet these energy efficient requirements, the sale of the home is subject to a maximum tax of $300 plus 2% of the taxable basis or measure that exceeds $6,000.

Under the amendment, sales of manufactured homes from July 1, 2009 through July 1, 2019, would be exempt from the entire tax if the manufactured home has been designated by the United States Environmental Protection Agency and the United Stated Department of Energy as meeting or exceeding each agency's energy saving efficiency requirements or has been designated as meeting or exceeding such requirements under each agency's ENERGY STAR program.

The dealer selling the manufactured home must still maintain records, on forms provided by the State Energy Office, on each manufactured home sold that meets the energy efficiency levels established in this law. These records must be maintained for 3 years and must be made available for inspection upon request of the Department of Consumer Affairs or the State Energy Office.

The maximum tax and exemption provisions of this subsection only apply to a manufactured home as defined in Code Section 40-29-20; they do not apply to a single-family modular home regulated pursuant to Chapter 43, Title 23. Code Section 40-29-20 defines a manufactured home as a structure, transportable in one or more sections which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length or when erected on site is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in it.

Note Expiration: The exemption expires July 2, 2019 and, therefore, will not apply to sales of manufactured homes occurring on or after that date.

Effective Date: July 1, 2009

The following provision was enacted in 2008, but has been ruled unconstitutional. It is summarized below for informational purposes.

Senate Bill 1143, Section 1 (Act No. 338)

Sales Tax Holiday – Energy Efficient Products Ruled Unconstitutional

On May 4, 2009, the South Carolina Supreme Court ruled in *The American Petroleum Institute and BP Products North America Inc v. South Carolina Department of Revenue, et al.* (Opinion No. 26645) that Act 338 of 2008 violated the one subject rule of the South Carolina Constitution and was unconstitutional. The Act concerned motor fuel products offered by a terminal (Code Section 12-28-340), a sales tax holiday for handguns, rifles and shotguns (Code Section 12-36-2120(76)) and a sales tax holiday for energy efficient products (Code Section 12-36-2120(77)). Code Section 12-36-2120(77) provided a sales tax exemption for certain energy efficient products purchased from 12:01 a.m. October 1 through midnight October 31 during years 2009 – 2018 if certain revenue growth forecasts are met. Based on the court ruling, the sales tax holiday for energy efficient products and the sales tax holiday for handguns, rifles, and shotguns in Code Section 12-36-2120(77) and Code Section 12-36-2120(76), respectively, have been eliminated.

Note: See House Bill 3560, Part IB, Section 89, Proviso 89.135 (Act No. 23), a temporary proviso summarized above, authorizing a sales tax holiday for handguns, rifles, and shotguns on November 27 and 28, 2009.

MISCELLANEOUS

ADMINISTRATIVE and PROCEDURAL MATTERS (Summarized by Subject Matter)

House Bill 3560, Part IB, Section 81, Proviso 81.16 (Act No. 23)

Website Posting of Tax Return Information for Candidates and Gubernatorial Appointees – New Voluntary Program

This temporary proviso provides that the Department must develop a program to process inquiries from a candidate for an office in South Carolina or its political subdivisions or any gubernatorial appointee concerning that candidate's or appointee's state income tax filings. Upon request by the candidate or appointee in connection with his own income tax return, the Department must determine if the candidate or appointee has filed his annual state income tax returns for the past ten years, paid all income taxes due during that time period, and, if applicable, satisfied all judgments, liens, or other penalties for failure to pay income taxes when due.

Unless the candidate or appointee requests otherwise, the following information will be posted on the Department's website:

1. The candidate or appointee's name;

2. The years that the candidate or appointee was required to file income tax returns during the last ten years and any years that he was not required to file income tax returns;

3. Whether the candidate or appointee filed income tax returns in each of the ten years that he was required to file an income tax return;

4. Whether the candidate or appointee paid income taxes due each year that he was required to file an income tax return; and

5. Whether the candidate or appointee had a judgment, lien, or other penalty levied against him for failure to pay income taxes when due; the year of any levy; and whether the judgment, lien or other penalty has been satisfied.

A candidate or appointee's inquiry constitutes a waiver of confidentiality with the Department concerning the information posted. The Department may not post complete income tax returns.

Effective Date: May 19, 2009. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2010.

MISCELLANEOUS TAXES

House Bill 3560, Part IB, Section 81, Proviso 81.17 (Act No. 23)

Admissions Tax Exemption for Payment to Nonprofit Athletic Booster Organizations for Right to Purchase Athletic Event Season Tickets

Article 17, Chapter 21 of Title 12 provides for an admissions tax of 5% on paid admissions to places of amusement within South Carolina. Code Section 12-21-2420(4) provides that the admissions tax applies to paid admissions to all athletic events of any institution above the high school level.

This temporary proviso provides that any amount that an accredited college or university requires a season ticket holder to pay to a nonprofit athletic booster organization to receive the right to purchase athletic event tickets is exempt from admissions tax. The nonprofit athletic booster organization must be exempt from federal income taxation.

Effective Date: This temporary proviso is retroactively effective on January 1, 2008. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2010.

OTHER ITEMS (Including Local Taxes)

House Bill 3203 (Act No. 14)

Drycleaning Facility Restoration Trust Fund - Amended

The "Drycleaning Facility Restoration Trust Fund" ("Fund") was enacted in 1995 in Title 44 Chapter 56, Article 4. The Department of Health and Environmental Control ("DEHC") is responsible for the administration of the Fund. The Funds's purpose is to provide resources to rehabilitate sites contaminated by the release of drycleaning solvents related to the operation of drycleaning facilities or wholesale supply facilities and to provide an insurance pool for the purpose of defraying the cost of the remediation or cleanup for eligible members of the drycleaning industry and related industries.

In general, the Fund generates money from registration fees and environmental surcharges. The Department of Revenue ("Department") is responsible for collecting and enforcing the revenue for the Fund. During this legislative session, amendments were made to the Fund provisions. Below is a summary of the statutes and related amendments pertaining to the Department's administration of the Fund revenue. This is not a summary of the Department of Health and Environmental Control's ("DHEC") duties or a summary of dry cleaning owner or operator responsibilities under DHEC's regulation. DHEC has informed the Department that they are sending out an explanation of the changes to the Fund.

● Definitions

Code Section 44-56-410 provides definitions of terms used in Article 4. The term "drycleaning facility" and "person" in Code Section 44-56-410(3) and (7), respectively, have been amended. The practical effect of amending the definition of drycleaning facility is to clarify the meaning of retail establishment and add a definition of wholesale establishment. The definitions now read:

"Drycleaning facility" means a professional commercial establishment located in this State for the purpose of cleaning clothing and other fabrics utilizing a process which involves the use of drycleaning solvents. In the case of a retail establishment, the establishment is one that operates or has at some time in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics for members of the public, other drycleaning facilities, and dry drop-off facilities. In the case of a wholesale establishment, the establishment is one that operates or has at some time in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics for other drycleaning facilities or dry drop-off facilities. 'Drycleaning facility' includes laundry facilities that are using or have used drycleaning solvents as part of their cleaning process but does not include textile mills or uniform rental and linen supply facilities.

"Person" includes an individual, partnership, corporation, association, trust, estate, receiver, company, limited liability company, or another entity or group.

Code Section 44-56-410(13) and (14) have been added to define the terms "former drycleaning facility" and "property owner," respectively. The definitions are:

"Former drycleaning facility" means a drycleaning facility or wholesale supply facility that ceases to be operated as a drycleaning facility or wholesale supply facility before July 1, 1995.

"Property owner" means a person who is vested with ownership, dominion, or legal or rightful title to the real property or who has a ground lease interest in the real property on which a drycleaning or wholesale supply facility is or has ever been located.

Effective Date: May 6, 2009

● Surcharge on Retail Drycleaning or Dry Drop-Off Facilities

Surcharge Requirements. Code Section 44-56-430(A) imposes an environmental surcharge on every owner or operator of a retail drycleaning facility or a dry drop-off facility. The surcharge amount is 1% of the gross proceeds of sales of the facility. The surcharge is due on the 20th day of the following month. The Department may allow quarterly, semiannual, or annual payments. This surcharge is suspended when the uncommitted balance of the Fund account exceeds $5 million.

Exemption from Surcharge. The 1% surcharge is not imposed on the following facilities or sales. (See the discussion at the end of this Act on the Drycleaning Facility Exemption Certificate and Facilities Exempt from Fund Participation.)

1. Drycleaning facilities in existence before July 1, 1995 that have a "Drycleaning Facility Exemption Certificate" issued by the Department on or after July 1, 2009.

2. Dry drop-off facilities where clothing or other fabrics are only cleaned by a drycleaning facility and (a) the drycleaning facility is owned or operated by the same person who owns or operates the dry drop-off facility, (b) the drycleaning facility is issued a Drycleaning Facility Exemption Certificate by the Department on or after July 1, 2009, and (c) the drycleaning facility's owner or operator, or related entity, does not own or operate any other drycleaning facilities that are participating in the Fund.

3. Wholesale sales of drycleaning services provided to another drycleaning facility or a dry drop-off facility.

Effective Date: March 1, 2010 for amendments to the imposition of the surcharges imposed under Code Section 44-56-430(A) and May 6, 2009 for amendments to Code Section 44-56-430(B).

● Registration Fees – Renewals

General Requirements. Code Section 44-56-470 provides for payment of initial and renewal registration fees to the Department. The fee is based on the number of employees employed by the owner or operator of the drycleaning facility and his dry drop-off facilities for the 12 months preceding payment of the fee.

The initial and annual registration fees for each drycleaning facility are computed as follows:

Number of Employees (as defined in Code Section 44-56-410(6))	Registration Fee
1 – 4	$ 750
5 -10	$1,500
11 – more	$2,250

Drycleaning Facility Established After October 1, 1995. The owner or operator of a operating drycleaning facility that was established after October 1, 1995 must register with and pay an initial registration fee and pay annual or quarterly renewal registration fees to the Department. The owner or operator must also provide a notarized certification of the number of employees employed at the drycleaning facility and dry drop-off facilities for the 12 months preceding payment of the fee.

Property Owner May Register. If the owner or operator does not register a facility, the property owner may register the facility. To register, the property owner must obtain a notarized certification from the owner or operator of the drycleaning facility, on a form provided by the Department certifying the number of employees employed by the owner or operator of the drycleaning facility and his dry drop-off facilities for the 12 month period preceding payment of the fee and remit the required fee. If the employee data cannot be obtained, the property owner must pay $2,250 to register the facility.

Upon registration by the property owner, the owner or operator of the drycleaning facility must be notified by the Department of the registration and must comply with all applicable Fund provisions, including paying subsequent registration renewal fees.

Exemption from Registration Fees. The registration fees are not imposed on the following facilites:

1. Drycleaning facilities in existence before July 1, 1995 that has a “Drycleaning Facility Exemption Certificate” issued by the Department on or after July 1, 2009.

2. Drycleaning facilities in existence before January 1, 1940 that have drycleaned only with nonhalogenated cleaners.

Effective Date: March 1, 2010 for amendments to the imposition of the fees imposed under Code Section 44-56-470(A) and May 6, 2009 for all other amendments to Code Section 44-56-470.

● Annual Drycleaning "Certificate of Registration" Issued by the Department

General Provisions. Code Section 44-56-475 provides that each drycleaning facility registered under Code Section 44-56-470 (see Registration Fees - Renewals discussion above) must be issued an annual "drycleaner's certificate of registration" by the Department. The certificate of registration is valid from October 1 - September 30 following the registration date. For registration of a new drycleaning facility, the certificate of registration is valid from the date of issuance through September 30. It must be conspicuously displayed at the drycleaning facility at all times.

Use of Certificate of Registration. To purchase or receive drycleaning solvent from a wholesale supply facility or another drycleaning facility, a drycleaning facility must provide a copy of its current certificate of registration or drycleaning facility exemption certificate. The following provides rules and penalties for facilities providing or receiving solvents:

1. Solvents Provided by Wholesale Supply Facility – Rules and Penalties. A wholesale supply facility is prohibited from selling or providing drycleaning solvent to any drycleaning facility that does not have a current certificate of registration or drycleaning facility exemption certificate. A wholesale supply facility violating this provision is subject to a civil penalty of up to $10,000 for each sale or transfer. Code Section 44-56-475(D)(1).

2. Solvents Provided by Drycleaning Facility – Rules and Penatlies. A drycleaning facility is prohibited from selling or providing solvent to another drycleaning facility that does not have a current certificate of registration or a drycleaning facility exemption certificate (even if the same person owns or operates both drycleaning facilities.) A drycleaning facility violating this provision is subject to a civil penalty of up to $10,000 for each sale or transfer. Code Section 44-56-475(D)(2).

3. Solvents Received by Drycleaning Facility – Rules and Penalties. A drycleaning facility that does not have a current certificate of registration or a drycleaning facility exemption certificate is prohibited from purchasing or receiving drycleaning solvent. A drycleaning facility violating this provision is subject to a civil penalty of up to $10,000 for each purchase or receipt. Code Section 44-56-475(D)(3).

Revocation of Certificates of Registration. Code Section 44-56-475(E) provides that the Department, in addition to all other penalties authorized by this law and in addition to the provisions of Code Section 12-54-90, may revoke one or more certificates of registration of any owner or operator of a drycleaning facility for failure to remit any taxes, surcharges, or fees due by the owner or operator under Title 44, Chapter 56, Article 4 or Title 12 or when the owner or operator fails, neglects, violates, or refuses to comply with the provisions of Code Section 44-56-475.

Effective Date: May 6, 2009

● Surcharge for Producing or Importing Solvents

General Rule. Code Section 44-56-480 imposes a surcharge on the privilege of producing in, importing into, or causing to be imported into, the State drycleaning solvent. A surcharge of $10 per gallon on halogenated drycleaning fluid and $2 per gallon on nonhalogenated cleaner is levied on each gallon to be used for drycleaning purposes when imported into or produced in the State. Nonhalogenated cleaners purchased, produced, or transported in a nonliquid physical state are subject to a surcharge of 20¢ per pound.

Exemption from Surcharge. Code Section 44-56-480(A) has been amended to add that the surcharge does not apply to sales or distributions to, or purchases or receipts by, drycleaning facilities in existence prior to July 1, 1995, that have a Drycleaning Facility Exemption Certificate issued by the Department on or after July 1, 2009.

Code Section 44-56-480(D) have been amended to provide that the solvent dealer may pass the costs of the surcharge to any owner or operator of a drycleaning facility who has purchased drycleaning solvent for use, consumption, resale, or distribution in South Carolina except the surcharge cannot be charged to a facility in existence before July 1, 1995 that has a Drycleaning Facility Exemption Certificate issued by the Department on or after July 1, 2009.

Effective Date: March 1, 2010 for amendments to the imposition of the surcharges imposed under Code Section 44-56-480(A) and 44-56-480(D) and May 6, 2009 for all other amendments to Code Section 44-56-480.

● Facilities Exempt from Fund Participation

Code Section 44-56-485 provides that drycleaning facilities who have a "Drycleaning Facility Exemption Certificate" issued by the Department are not subject to provisions of Title 44 Chapter 56, Article 4. The Drycleaning Facility Exemption Certificate only applies to the physical location at which the drycleaning takes place. The Drycleaning Facility Exemption Certificate is not transferable to any other physical location.

The following summarizes the requirements for a facility to request a "Drycleaning Facility Exemption Certificate" and become exempt from participating in the Fund:

1. Drycleaning Facilities in Existence on July 1, 1995. The Department will issue a "Drycleaning Facility Exemption Certificate" to a drycleaning facility that was in existence on July 1, 1995, after DHEC has verified that the drycleaning facility has met the following requirements:

    a. It was in existence on July 1, 1995; and

b. It drycleaned with nonhalogenated cleaners only on or before July 1, 1995 or drycleaned with halogenated fluids and nonhalogenated cleaners and notified the Department before October 1, 1995, of its election to not participate in the Fund; and

c. It has never paid any Fund surcharges or fees to the Department; and

d. It requests a Drycleaning Facility Exemption Certificate from the Department between July 1, 2009 and December 31, 2009.

Note: If the ownership or operation of a drycleaning facility that possesses a Drycleaning Facility Exemption Certificate is transferred to another person after December 31, 2009, the new owner or operator shall request and must be provided an updated Drycleaning Facility Exemption Certificate from the Department.

2. Drycleaning Facilities in Existence Prior to January 1, 1940. DHEC may direct the Department to allow a property owner, owner or operator of a drycleaning facility that has previously registered for coverage to opt out of the Fund if the following requirements are met:

   a. It has been in operation before January 1, 1940; and

   b. It drycleaned only with nonhalogenated cleaners; and

   c. It requests a "Drycleaning Facility Exemption Certificate" between July 2, 2009, and September 29, 2009.

   Note: Fees that have been paid by the property owner, owner or operator of a drycleaning facility that is opting out of the provisions of Article 4 may not be refunded.

3. Dry Drop-off Facilities. Article 4 does not apply to dry drop-off facilities where the clothing or other fabrics are only cleaned by a drycleaning facility:

   a. owned or operated by the same person that owns or operates the dry drop-off facility;

   b. issued a Drycleaning Facility Exemption Certificate by the Department of Revenue on July 1, 2009 or afterward; and

   c. where the owner or operator, or related entity, does not own or operate any other drycleaning facilities participating in the Fund.

Note. Code Section 44-56-470(B) provides the drycleaning facility exemption certificate must be conspicuously displayed at the drycleaning facility at all times.

Effective Date: May 6, 2009

● Disclosure of Information

Code Section 44-56-495 provides for a Drycleaning Advisory Council to advise DHEC on matters affecting drycleaning and related industries. Code Section 44-56-495(F) provides that the Department may disclose to DHEC information on a return filed with the Department pursuant to Code Section 44-56-430 (the 1% surcharge on gross sales proceeds at a retail drycleaning facility or dry drop-off facility.) Members of the Advisory Council (other than the DHEC administrator representative) or the public may not receive specific information on the surcharge return. Members may be provided available statistical information concerning the surcharge.

Effective Date: May 6, 2010

Senate Bill 12 (Act No. 81)

SC Taxation Realignment Commission Created and Joint Sales Tax Exemptions Review Committee Deleted

This uncodified Act creates the South Carolina Taxation Realignment Commission. The duties of the eleven member appointed commission include:

1. Developing criteria for assessing the effectiveness of the current tax system structure, and the likely systemic impact of any proposed changes affecting tax revenues to the General Assembly by September 30, 2009.

2. Providing an evaluation of the state's tax system structure and recommendation to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee by March 15, 2010. The report shall consider: (a) sales and use tax exemptions or limitations to be retained, modified, or repealed; (b) the assessment of state and local taxes levied and other provisions affecting state and local revenue to fund the operation and responsibilities of state and local government, respectively; and (c) any fee, fine, license, forfeiture, or Other Funds.

3. Making recommendations to the General Assembly by March 15, 2010 of the advantages and drawbacks of a revenue neutral replacement of the state individual and corporate income tax, state imposed sales and use tax, estate tax, bank tax, savings and loan association tax, and taxes on beer, wine, and alcoholic beverages with a broadly based consumption tax modeled on the proposed federal Fair Tax as that form of tax would have to be adapted to apply on the state level.

Unless otherwise authorized, the commission's business shall be concluded by January 1, 2011, at which time the commission is dissolved. The General Assembly may extend the dates the commission shall submit required reports.

This legislation also deletes Act 388 of 2006, Section 1 of Part V. It had provided that the sales tax exemptions in Code Section 12-36-2120 shall be reviewed by the General Assembly not later than its 2010 Session and thereafter as the General Assembly deems appropriate but not later than its session every ten years after the first review and had also established a Joint Sales Tax Exemptions Review Committee to assist the General Assembly in performing its duties.

Effective Date: June 30, 2009

Senate Bill 360 (Act No. 49)

Local Capital Projects Sales and Use Tax – Amended

Article 3, Chapter 10 of Title 4, concerning the local capital projects sales and use tax that may be imposed by a county, has been amended. The amendments include:

1. Revenue Collected: Code Section 4-10-310 has been amended to eliminate the requirement that the tax must collect a limited amount of money.

2. Imposition Time Period: Code Section 4-10-330(A)(2) has been amended with respect to the amount of time allowed for the imposition of the tax. For the first time the tax is imposed in a county, the maximum time for the imposition may be set at two, four, six or eight years. For a re-imposition of the tax in a county, the maximum time for the imposition of the tax (which must end on April 30th) may be set at one, three, five or seven years.

   Code Section 4-10-340(B) has been amended to state that the tax terminates on the final day of the maximum time period specified for the imposition. Prior to this amendment, this section required that the imposition of the tax terminates on the earlier of the maximum date specified in the ordinance or the end of the calendar quarter during which the Department receives a certificate indicating that no more bonds approved in the referendum remain outstanding that are payable from the sales and that all costs of the projects have been paid upon application of the net proceeds during the quarter.

3. Use of Funds: Code Section 4-10-340(C) has been amended to add that if funds still remain and the tax is reimposed, the remaining funds must be used to fund the new projects approved by the voters in the order the projects appeared on the enacting ordinance. Further, if funds still remain and the tax is not reimposed, the remaining funds must be used for the purposes set forth in Code Section 4-10-330(A)(1) as established in an ordinance specifying the authorized purpose or purposes for which the funds will be used.

Code Section 4-10-330(A)(1)(b) has been amended to add educational facilities under the direction of an area commission for technical education to the list of projects for which the tax may be imposed. This amendment only applies to a tax imposed or reimposed pursuant to a referendum held on or after June 3, 2009.

4. Items Exempt from Tax: Code Section 4-10-350(B) has been amended to exempt unprepared food items eligible for purchase with United States Department of Agriculture food coupons. This amendment only applies to a tax imposed, or reimposed, pursuant to a referendum held on or after June 3, 2009.

Effective Date: June 3, 2009, except where otherwise indicated.

House Bill 3232 (Act No. Unassigned)

Certification Date for 2008 Sales Tax Referendums Changed

The Local Option Capital Projects Sales and Use Tax authorized under Chapter 10 of Title 4 requires that the results of the referendum be certified to the local governing body and the Department by November 30 following the date of the referendum in order for the local tax to be imposed by the following May 1. If the certification is not received timely, then the imposition of the tax is delayed for 12 months.

This joint resolution provides that if the result of any referendum conducted in the 2008 General Election was certified to the appropriate governing body and to the Department by December 11, 2008, then the certification requirements were satisfied. As a result, Allendale County's Local Option Capital Projects Sales and Use Tax was imposed effective May 1, 2009.

Effective Date: February 25, 2009

Senate Bill 483 (Act No. 3)

Municipalities May Impose Local Option Tourism Development Fees

Article 9, Chapter 10, Title 4 has been added to allow municipalities located in counties which collect substantial accommodations revenue to impose a "Local Option Tourism Development Fee" ("Fee") of up to 1% on items that are subject to the South Carolina sales and use tax with certain limitations. The Fee may be imposed for up to 10 years.

A municipality located in a county with at least $14 million in revenues from the state accommodations tax imposed by Code Section 12-36-920 (7% tax on the rental of accommodations to transients) in a fiscal year, may impose a Fee of up to 1% of the gross proceeds of sales or sales price on items subject to the state sales and use tax imposed under Chapter 36, Title 12. The Fee must be administered and collected by the Department in the same manner that sales and use taxes are collected and the Department may prescribe amounts that may be added to the sales price of items because of the Fee. The Fee is in addition to all other local sales and use taxes and the enforcement provisions of Chapter 54, Title 12 apply to the Fee. The Fee may not be imposed on items subject to the maximum tax or on gross proceeds attributable to sales of unprepared food that may be purchased with United States Department of Agriculture Food Coupons.

For purposes of the Fee, a municipality means a municipal corporation created pursuant to Chapter 1, Title 5, or a municipal government as the use of the term dictates in a qualifying county.

The Fee may be imposed by: (1) an ordinance adopted by at least two-thirds of the members of the municipal council; or (2) the approval of a majority of the qualified electors voting in a referendum called by a majority of the members of municipal council after adopting a resolution calling for a referendum.

If the referendum is passed or an ordinance is enacted, the Fee is imposed beginning with the first day of the first month that begins more than 60 days after the municipality files with the Department a certified copy of the imposition ordinance or the certification of the results of the referendum.

Once collected, the State Treasurer shall distribute the revenue and interest from the Fees on a quarterly basis to the Treasurer of the municipality in which the Fee is imposed. For the first two years, all revenues from the Fee must be used for tourism advertisement and promotion directed at out-of-state residents. The municipality shall choose no more than two organizations to receive the revenues from the Fee and conduct the tourism advertising and marketing. These organizations must meet certain criteria in the statute.

After two years, up to 20% of the revenues received from the Fee may be used for: (1) property tax rollbacks on owner occupied real property; (2) tourism related capital purchases; or (3) both of these purposes. However, if Fees are used for these purposes, at least 20% of these funds must be used for property tax rollbacks. In order for a capital

project to be funded with Fee revenues, the project must consist of new construction or renovation of a tourism related facility intended to grow or maintain the overnight tourism market for the municipality.

Note: At the time of this publication, only municipalities in Horry County met the criterion for this Fee (located in a county with at least $14 million in revenues from the state accommodations tax). The City of Myrtle Beach will impose this Fee at the rate of 1% beginning August 1, 2009.

Effective Date: April 9, 2009

Senate Bill 235 (Act No. Unassigned)

Dorchester School District No. 2 – Impact Fee on New Residential Dwellings

This uncodified act allows the Board of Trustees for Dorchester School District No. 2 to impose an impact fee on any developer for each new residential dwelling unit constructed by the developer within the school district. The impact fee may not exceed $2,500 per dwelling unit. The fee must be paid to Dorchester School District No. 2 or, pursuant to an agreement, to a county or municipality that pays the fees to the school district, prior to or at the issuance of a certificate of occupancy for a dwelling unit.

Dorchester School District No. 2 must maintain the impact fee funds in a separate interest bearing account and may only appropriate account funds for: (1) the construction of new public education facilities for grades K-12, and (2) the payment of principal and interest on existing or new bonds issued by the school district for the construction of public education facilities for grades K-12.

Effective Date: February 26, 2009, and applies to any new residential construction which has not been issued a certificate of occupancy.

REGULATORY

House Bill 3413 (Act No. 44)

Registration and Tagging of Beer Kegs – Definition of "Keg" Revised

Article 19 of Chapter 4 of Title 61 provides for the registration and tagging of beer kegs sold by a holder of a retail beer and wine license. Code Section 61-4-1910(1) has been amended to exclude non-metal containers from the definition of "keg," and thus from the registration and tagging provisions.

Effective Date: June 2, 2009

House Bill 3452 (Act No. 11)

Alcoholic Liquors Biennial License for Manufacturers and Micro-distilleries

Code Section 12-33-210(A), providing for a biennial license taxes issued under Title 12, has been amended to provide for that a manufacturer's license is $50,000 and a micro-distillery license is $5,000. Previously, there was a license for all manufacturers (which included a micro-distillery) and the fee was $1,000.

In related amendments, Code Section 61-6-1110 was added to state that the Department may issue a manufacturer's license to manufacture alcoholic liquors in this State subject to the requirements of Chapter 6 of Title 61 and Code Section 61-6-1120 was added to state that the Department may issue a micro-distillery license to a person to operate one micro-distillery in South Carolina. A micro-distillery is not required to obtain an additional manufacturer's license. A definition of "micro-distillery" and provisions allowing for tastings and retail sales on the premises of manufacturers and micro-distilleries have also been added by this Act and are discussed below.

Effective Date: May 6, 2009

House Bill 3452, Section 1 (Act No. 11)

Tastings and Retail Sales for Manufacturers and Micro-distilleries

Subarticle 11, Article 3, Chapter 6 of Title 12 provides for the regulation of manufacturers and micro-distilleries. The following amendments summarize the definitions, requirements, taxation, and penalties regarding the tastings and sales of alcoholic liquors to consumers at the manufacturers and micro-distilleries licensed premises.

Definitions. Code Section 61-6-1095 has been added to provide the following definitions:

1. "Person" means an individual, partnership, corporation, or other form of business entity.

2. "Micro-distillery" means a manufacturer that distills, blends, and bottles alcoholic liquors with an alcohol content greater than 17% on the licensed premises and who produces a maximum quantity annually of 125,000 cases at the licensed premises.

3. "Licensed premises" means a location where the micro-distillery or manufacturer is licensed for the manufacture, tasting, and retail sales of alcoholic liquors produced at that location. The licensed premises includes the producing areas, storage areas, tasting areas, selling areas, parking lots, and other areas normally used by the license holder to conduct its business.

Tastings Applicable to Manufacturer. Code Section 61-6-1100, which prohibits a manufacturer from owning or operating more than one manufacturing establishment in any one county, or permitting the drinking of alcoholic liquors on the licensed premises, has been amended to allow for the tastings.

Tastings and Retail Sales. Code Section 61-6-1140 has been added to provide that the holder of a micro-distillery or manufacturer's license ("license holder") may permit tastings and retail sales of the alcoholic liquors produced at the licensed premises. The following limitations apply:

1. Tastings and sales must be offered to consumers only as part of a tour of the licensed on-site premises.

2. The license holder must establish appropriate protocols to ensure that consumers are at least 21 years of age and do not attend more than one tasting per day.

3. The quantity of alcoholic liquor dispensed for tasting must not be greater than 0.5 ounce per sample.

4. The total quantity of alcoholic liquor dispensed to an individual consumer may not exceed 1.5 ounces in one day.

5. Tastings and sales may occur only between the hours of 9 a.m. and 7 p.m., Monday through Saturday.

6. The license holder may charge for alcoholic liquors consumed at a tasting, but must collect and remit the liquor by the drink excise tax pursuant to the provisions of Title 12, Chapter 33.

7. Tastings may not occur in conjunction with the service of food in a restaurant setting.

8. Only brands of alcoholic liquors actually manufactured, distilled, or fermented at and distributed to wholesalers from the licensed premises may be sold or offered for tasting.

Sales Authorized and Restrictions. Code Section 61-6-1150 has been added to authorize sales and tastings at the licensed premises of a micro-distillery or manufacturer. This authorization is expressly intended for the promotion of education regarding production of alcoholic liquors in South Carolina and not to create competition between producers and retailers. The following provisions apply to a holder of a valid micro-distillery or manufacturer's license ("license holder"):

1. The alcoholic liquors produced at the licensed premises of a micro-distillery or manufacture may be sold by a license holder to a licensed wholesaler in any quantities.

2. The alcoholic liquors produced at the licensed premises may be transported by a license holder in any quantities out of state for sale outside of South Carolina.

3. The alcoholic liquors produced at the licensed premises may be sold at retail by a license holder at the licensed premises only in quantities of 750-milliliter bottles, but only if the labels for the bottles are marked "not for resale."

4. No more than three 750-milliliter bottles of alcoholic liquors may be sold at retail to a consumer in one business day.

5. A license holder must not allow consumption on the licensed premises of alcoholic liquors sold by the bottle at the licensed premises.

6. A license holder may maintain pricing of the alcoholic liquors sold at the licensed premises at a price approximating retail prices generally charged for identical alcoholic liquors in the county where the on-site premises is located.

7. A license holder may sell items promoting the brand or brands of alcoholic liquors produced at that location in a room on the licensed premises separate from the locations of the tastings.

8. A license holder may not sell or store goods, wares, or merchandise in or from the room in which alcoholic liquors are sold or tasted.

Taxes. Code Section 61-6-1130 has been added to provide that alcoholic liquors produced and sold at the licensed premises as provided above must be taxed and the taxes remitted as provided in Title 12, Chapter 33. Title 12, Chapter 33 governs taxes on alcoholic beverages, including taxes on sales of alcoholic liquor at wholesale and sales of alcoholic liquor by the drink. A micro-distillery or manufacturer must remit taxes to the Department for alcoholic liquors sold and dispensed to consumers at its licensed premises in an amount equal to taxes paid by wholesalers on alcoholic liquors.

Penalties. Code Section 61-6-1160(A) has been added to provide that, except as otherwise provided in Title 61, a person who transports, possesses, or consumes alcoholic liquors and who violates a provision summarized above is guilty of a misdemeanor and, upon conviction, must be fined not more than $100 or imprisoned for not more than 30 days. Code Section 61-6-1160(C) has been added to provide that a person licensed as a micro-distillery or manufacturer who acts to avoid payment of the excise tax imposed on the serving of alcoholic liquors by the drink provided for in Chapter 33 of Title 12 must be fined not less than $1,000 and have his license revoked permanently.

Code Section 61-6-1160(B) provides the following additional civil penalties for violations of the provisions summarized above:

1. First violation – a fine of not less than $200 nor more than $500 or suspension of the license for not more than 30 days, or both.

2. Second violation within 3 years of the first violation – a fine of not less than $200 nor more than $500 or suspension of the license for not more than 180 days, or both.

3. Third violation within 3 years of the first violation – a fine of not less than $500 and permanent revocation of the license.

All provisions of Code Section 61-6-1160 apply except as otherwise provided in Title 61.

Effective Date: May 6, 2009

MISCELLANEOUS REGULATIONS

Document No. 4005 – SC Regulation 117-1350

Deed Recording Fee – New Regulation

South Carolina imposes a deed recording fee pursuant to Chapter 24 of Title 12. This fee is composed of a state fee and a county fee. The office of the clerk of court or register of deeds collects the fee and remits the state portion to the Department monthly.

SC Regulation 117-1350 provides a comprehensive discussion of the deed recording fee to a variety of real estate transactions.

Effective Date: June 26, 2009

Errata Notice – SC Regulation 117-307.1 Corrected

Hotels, Motels and Similar Facilities – Error Corrected

SC Regulation 117-307.1, providing questions and answers concerning the sales tax on accommodations and additional guest charges under Code Section 12-36-920, was amended during the 2008 legislative session to reflect the increase in the general sales and use tax rate from 5% to 6% that was effective June 1, 2007. In Question #16 of this regulation, the admissions tax rate was inadvertently changed from 5% to 6% (see Code Section 12-21-2420). This errata notice, published in the March 2009 edition of the State Register, corrects this error in Question #16.

Effective Date: March 27, 2009

REENACTED TEMPORARY PROVISOS

The following temporary provisos were enacted in prior legislative sessions and were reenacted by the General Assembly in 2009. These temporary provisos continue in effect for the State fiscal year July 1, 2009 through June 30, 2010, and will expire June 30, 2010, unless reenacted by the General Assembly in the next legislative session.

ADMINISTRATIVE and PROCEDURAL MATTERS

House Bill 3560, Part IB, Section 72, Proviso 72.17 (Act No. 23)

Reduction on Interest Rate on Tax Refunds

This temporary proviso decreases by 2% the interest rate for tax refunds paid during the current fiscal year. The revenue resulting from this reduction must be used for operations of the State's Guardian ad Litem Program.

MISCELLANEOUS TAXES

House Bill 3560, Part IB, Section 1, Proviso 1.17 (Act No. 23)

Local Government School Buses - Motor Fuel Tax Exemption

This temporary proviso provides that motor fuel used in school buses operated by school districts, other governmental agencies, and "head start" agencies is exempt from the state motor fuel tax. Note: Motor fuel used in school buses owned by the state is exempt from the state motor fuel tax under Code Section 12-28-710(12).

House Bill 3560, Part IB, Section 21, Proviso 21.19 (Act No. 23)

Nursing Home Bed Franchise Fees – Suspension

This temporary proviso reenacts the suspension of the nursing home bed franchise fee imposed on February 1, 2002, but subsequently suspended July 1, 2002.

OTHER ITEMS

House Bill 3560, Part IB, Section 39, Proviso 39.10 (Act No. 23)

Motion Picture Wage/Payroll Rebate and Expenditure/Supplier Rebate – Increased Amounts

Code Sections 12-62-50 and 12-62-60 provide that the South Carolina Film Commission may rebate to a qualifying motion picture production company (1) a wage/payroll rebate not to exceed 15% of the total aggregate South Carolina payroll of the persons employed in connection with the production of a motion picture in South Carolina and (2) an expenditure/supplier rebate of up to 15% of its qualifying expenditures made in South Carolina.

This temporary proviso increases the amounts the Film Commission may rebate. The wage/payroll rebate is increased up to 20% of qualifying payroll and the expenditure/ supplier rebate is increased up to 30% of qualifying expenditures. A motion picture production company previously approved at the lower percentages may reapply for the higher percentages only if the project that was approved is still in production in South Carolina as of July 1, 2009.

REMINDER

The following provisions were enacted in 2008, but are effective in 2009 or thereafter. They are summarized below for informational purposes.

MISCELLANEOUS TAXES

House Bill 4900 (Act No. 331)

Reduced Cigarette Ignition Propensity Standards

The General Assembly has enacted the "Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act" in Chapter 51 of Title 23. The purpose of this Act is to provide that cigarettes may not be sold or offered for sale in South Carolina unless the cigarettes have been tested in accordance with certain test methods, met certain performance standards, and received certain certifications. In addition the cigarettes must be properly marked to indicate compliance with this Act.

While the State Fire Marshal administers this law, and is responsible for promulgating regulations necessary to administer it, the following provisions apply to the Department:

1. The Department in the regular course of conducting cigarette tax inspections of wholesalers, retailers and anyone liable for the tax may inspect the cigarettes to determine if they are marked as required under this Act. If the cigarettes are not marked as required, the Department shall notify the State Fire Marshall. Code Section 23-51-70(B).

2. The Department, as well as the Attorney General, the State Fire Marshal and other law enforcement personnel, may examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises. A person in the possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale, is directed and required to give the Department, as well as the Attorney General, State Fire Marshal, and other law enforcement personnel, the means, facilities, and opportunity for these examinations. Code Section 23-51-80.

3. Cigarettes seized by the State Fire Marshall or any law enforcement personnel for not being marked as required under this Act must be turned over to the Department. These cigarettes are forfeited to the State. Cigarettes seized must be destroyed; however, prior to their destruction the true holder of the trademark rights in the cigarette brand must be permitted to inspect the cigarettes. Code Section 23-51-60(G).

4. Each manufacturer must certify to the State Fire Marshall that each cigarette has been tested and met the requirements of this Act. This certification must contain certain information about each cigarette, such as brand or trade name, style, length, and the marking required under the Act. Each cigarette must be recertified every three years. The certifications must be made available to the Department, as well as the Attorney General. Code Section 23-51-40.

Note: This Act also contains an uncodified provision that became effective June 5, 2008, that prohibits local governments from enacting any ordinance in conflict with, or preempting, the provisions of this Act.

Effective Date: January 1, 2010

House Bill 3649, Section 1 (Act No. 261)

Alternative Fuels Incentive - Amended

The Energy Freedom and Rural Development Act contained in Chapter 63 of Title 12 was enacted in 2007 and effective July 1, 2008. The statute was revised in the 2008 legislative session. Code Section 12-63-20(A), as amended, is summarized below.

Code Section 12-63-20(A) provides the following incentives to retailers and wholesalers of certain alternative fuels from the general fund (excluding revenue derived from the sales and use tax) for alternative fuel sales occurring after June 30, 2009, and before July 1, 2012:

1. A 5¢ incentive payment to the retailer for each gallon of E70 fuel or greater sold, provided the ethanol-based fuel is subject to the South Carolina motor fuel user fee.

2. A 25¢ incentive payment to the retailer for each gallon of pure biodiesel fuel sold so that the biodiesel in the blend is at least 2% B2 or greater, provided that the qualified biodiesel content fuel is subject to the South Carolina motor fuel user fee.

3. A 25¢ incentive payment to the retailer or wholesaler for each gallon of pure biodiesel fuel sold as dyed diesel fuel for “off-road” uses, so that the biodiesel in the blend is at least 2% B2 or greater.

For purposes of these incentives, “biodiesel fuel” is a fuel for motor vehicle diesel engines comprised of vegetable oils or animal fats and meeting the specifications of the American Society of Testing and Materials D6751 or D975 blended stock. The payment of these incentives must be made to the retailer upon compliance with verification procedures set forth by the Department of Agriculture.

Note: Code Section 12-63-20(B), also amended in 2008, provides incentives to producers of electricity and energy generated from biomass resources. This incentive began in 2008.

Note Expiration: The incentive payments to retailers and wholesalers for alternative fuels in Code Section 12-63-20(A) expire on July 1, 2012 and, therefore, will not apply to sales occurring on or after that date.

Effective Date: May 29, 2008, and applies to sales after June 30, 2009 for the incentives for alternative fuel sales in Code Section 12-63-20(A).